

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 626

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; ENACTING THE EMPLOYEE ABUSE REGISTRY ACT;
ESTABLISHING A REGISTRY OF PROVIDER EMPLOYEES WITH
SUBSTANTIATED ABUSE, NEGLECT OR EXPLOITATION CHARGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Employee Abuse Registry Act".

Section 2. DEFINITIONS.--As used in the Employee Abuse
Registry Act:

A. "abuse" means:

(1) knowingly, intentionally or negligently
and without justifiable cause inflicting physical pain, injury
or mental anguish; or

(2) the intentional deprivation by a caretaker
or other person of services necessary to maintain the mental

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underscored material = new
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1 and physical health of a person;

2 B. "department" means the department of health;

3 C. "direct care" means face-to-face services
4 provided or routine and unsupervised physical or financial
5 access to a recipient of services;

6 D. "employee" means a person employed by or on
7 contract with a provider, either directly or through a third
8 party arrangement to provide direct care. "Employee" does not
9 include a New Mexico licensed health care professional
10 practicing within the scope of the profession's license or a
11 certified nurse aide;

12 E. "exploitation" means an unjust or improper use
13 of a person's money or property for another person's profit or
14 advantage, pecuniary or otherwise;

15 F. "neglect" means, subject to a person's right to
16 refuse treatment and subject to a provider's right to exercise
17 sound medical discretion, the failure of an employee to provide
18 basic needs such as clothing, food, shelter, supervision and
19 care for the physical and mental health of a person or failure
20 by a person that may cause physical or psychological harm;

21 G. "provider" means an intermediate care facility
22 for the mentally retarded; a rehabilitation facility; a home
23 health agency; a homemaker agency; a home for the aged or
24 disabled; a group home; an adult foster care home; a case
25 management entity that provides services to elderly people or

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1 people with developmental disabilities; a corporate guardian; a
 2 private residence that provides personal care, adult
 3 residential care or natural and surrogate family services
 4 provided to persons with developmental disabilities; an adult
 5 daycare center; a boarding home; an adult residential care
 6 home; a residential service or habilitation service authorized
 7 to be reimbursed by medicaid; any licensed or
 8 medicaid-certified entity or any program funded by the aging
 9 and long-term services department that provides respite,
 10 companion or personal care services; programs funded by the
 11 children, youth and families department that provide homemaker
 12 or adult daycare services; and any other individual, agency or
 13 organization that provides respite care or delivers home- and
 14 community-based services to adults or children with
 15 developmental disabilities or physical disabilities or to the
 16 elderly, but excluding a managed care organization unless the
 17 employees of the managed care organization provide respite
 18 care, deliver home- and community-based services to adults or
 19 children with developmental disabilities or physical
 20 disabilities or to the elderly;

21 H. "registry" means an electronic database that
 22 provides information on substantiated employee abuse, neglect
 23 or exploitation; and

24 I. "secretary" means the secretary of health.

25 Section 3. EMPLOYEE ABUSE REGISTRY.--

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1 A. The department shall establish an "employee
2 abuse registry" of employees and enter into the registry names
3 of employees with substantiated abuse, neglect or exploitation
4 charges as determined by the department pursuant to the
5 Employee Abuse Registry Act.

6 B. Before a provider hires or contracts with an
7 employee, the provider shall inquire of the department's
8 registry as to whether the employee is included in the
9 registry.

10 C. When the department's registry receives an
11 inquiry, the department shall inform the provider whether an
12 employee is included in the employee abuse registry.

13 D. Providers that hire employees shall document
14 that they have checked the abuse registry for each applicant
15 being considered for employment or contract.

16 E. A provider shall not hire or contract with an
17 employee in a direct care setting who is included in the
18 employee abuse registry.

19 F. The department or other governmental agency may,
20 at its discretion, terminate or not enter into or renew a
21 contract with a provider that fails to comply with the
22 provisions of Subsection E of this section.

23 G. A provider that reports allegations of abuse,
24 neglect or exploitation or that fails to hire an employee
25 because the employee is included in the registry is presumed to

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1 be acting in good faith and shall be immune from liability as
2 to that employee. If, however, the provider acted in bad faith
3 or with malicious purpose or discriminated against the
4 employee, the provider is not immune from liability as to that
5 employee.

6 H. After a period of five years, an employee placed
7 on the employee abuse registry may petition the department for
8 removal of the employee's name from the employee abuse
9 registry. Petitions for removal shall be in writing and mailed
10 or hand delivered to the department. Within thirty days of the
11 department's receipt of a petition, the secretary shall issue a
12 written decision on the petition and provide that decision to
13 the employee in person or by certified mail. If the secretary
14 denies the petition, the employee may, within ten days of
15 receipt of that decision, request a hearing. If an employee
16 requests a hearing, that hearing shall be conducted by an
17 independent hearing officer. An employee aggrieved by the
18 final decision following a hearing shall have the right to
19 judicial review pursuant to the provisions of Section 39-3-1.1
20 NMSA 1978.

21 Section 4. INVESTIGATION AND SUBSTANTIATION OF ABUSE,
22 NEGLECT OR EXPLOITATION BY THE DEPARTMENT.--

23 A. In addition to other actions required by law,
24 the department shall review all reports of abuse, neglect or
25 exploitation against employees of providers that are licensed

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1 by or under contract with the department and shall investigate
2 such reports as necessary to determine whether there is a
3 reasonable basis to believe that an employee committed abuse,
4 neglect or exploitation.

5 B. If the department determines that abuse, neglect
6 or exploitation has occurred, the department shall notify the
7 employee and the provider of that determination, and such
8 determination shall include a determination of whether the
9 abuse, neglect or exploitation was the result of conduct by the
10 employee, the provider or both.

11 Section 5. ADULT PROTECTIVE SERVICES DIVISION REPORT OF
12 ABUSE, NEGLECT OR EXPLOITATION.--

13 A. The adult protective services division of the
14 aging and long-term services department shall investigate
15 allegations of abuse, neglect and exploitation consistent with
16 its statutory responsibilities.

17 B. If the adult protective services division
18 determines that abuse, neglect or exploitation has occurred, it
19 shall notify the employee and the provider of that
20 determination, and such determination shall include a
21 determination of whether the abuse, neglect or exploitation was
22 the result of conduct by the employee, the provider or both.

23 C. The adult protective services division shall
24 report to the department of health any substantiated finding of
25 abuse, neglect or exploitation made against an employee of a

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1 provider under waiver or other programs administered by the
2 aging and long-term services department and not otherwise
3 licensed by or under contract with the department.

4 Section 6. PLACEMENT ON REGISTRY AND HEARING PROCESS.--

5 A. If the department or the adult protective
6 services division of the aging and long-term services
7 department determines that abuse, neglect or exploitation by an
8 employee has occurred, the department making that determination
9 shall notify the employee and the provider, in person or by
10 certified mail, of the following:

11 (1) the nature of the determination of the
12 abuse, neglect or exploitation;

13 (2) the date and time of the occurrence;

14 (3) the employee's right to a hearing;

15 (4) the department's intent to report the
16 substantiated findings, once the employee has had the
17 opportunity for a hearing, to the registry; and

18 (5) that the employee's failure to request a
19 hearing in writing within thirty days from the date of the
20 notice shall result in the department reporting substantiated
21 findings to the registry and the provider.

22 B. If an employee requests a hearing, that hearing
23 shall be conducted by an independent hearing officer of the
24 department that made the determination of abuse, neglect or
25 exploitation.

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